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*Attorneys for Plaintiff*

IN THE UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF THE NORTHERN MARIANA ISLANDS

SAIPAN HANDICRAFT,

Plaintiff,

vs.

MICRONESIA WOODCRAFT ENT., INC.,  
et al.,

Defendants.

CIVIL ACTION NO. 05-0040

**MOTION FOR ORDER  
PERMITTING WITHDRAWAL  
FROM REPRESENTATION  
UNDER LR 83.5.g.4**

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STEPHEN J. NUTTING and S. JOSHUA BERGER ("Attorneys"), attorneys of record for Plaintiff Saipan Handicraft ("Handicraft") in the above cause of action, hereby file this motion for leave of court to withdraw as attorneys of record for Handicraft pursuant to LR 1.5 and LR 83.5.g.4. In support of this motion, Attorneys Nutting and Berger state the following:

I.

Both Attorneys are licensed to and actively engage in the practice of law in the Commonwealth of the Northern Mariana Islands. Both maintain offices in Saipan.

II.

On October 10, 2006, Attorneys entered into an agreement with Handicraft in which they agreed to represent Handicraft as joint counsel in the above cause of action and to assist

1 Handicraft in obtaining registered trademark and copyright protection under United States  
2 Trademark and Copyright laws.

3  
4 III.

5 However, it was expressly understood that the Attorneys could not effectively represent  
6 Saipan Handicraft unless its principals, Rodrigo Capati and Adela Capati, worked cooperatively  
7 to assist counsel in prosecuting their claims and the Attorneys representation was expressly  
8 conditioned thereon.

9  
10 IV.

11 The attorneys worked together in the best interests of their clients to reach certain  
12 compromises to allow the business of Saipan Handicraft to proceed without being adversely  
13 affected by numerous domestic issues related to the impending divorce of the principals.

14  
15 V.

16 Unfortunately, communication between the principals and their counsel broke down, and  
17 the domestic discord has so permeated and affected the business and operations of Saipan  
18 Handicraft, that the attorneys could no longer receive any meaningful direction from the  
19 principals so as to effectively represent the plaintiff in the prosecution of its claims under the  
20 above enumerated cause.

21 VI.

22 A. Failure of Handicraft to pay attorneys' fees and costs of litigation: Permissive  
23 Withdrawal.

24 Handicraft's owners, Rodrigo M. Capati ("AMC") and Adela S. Capati ("ASC") are  
25 unable to pay attorneys' fees and costs according to the representation agreement. As of February  
26 25, 2007, Handicraft owes an outstanding amount of \$1,370.00 in fees and costs to Attorney  
27 Berger, and \$3,885.00 as of March 28, 2007 to Attorney Nutting. Handicraft's accounts are more

1 than thirty days in arrears and Attorneys reasonably believe that Handicraft is currently without  
2 the necessary funds to pay these bills.

3 MRPC Rule 1.16(b)(5) allows permissive withdrawal from representation if legal counsel  
4 is not getting paid and hence continued representation becomes an unreasonable financial burden  
5 of the lawyer. MRPC Rule 1.16(b)(5) (2002) (emphasis added); *see also* MRPC Rule 1.16 cmt.  
6 [8] (2002); *Ferruzzo v. The Superior Court of Orange County*, 163 Cal. Rptr. 573 (Cal. Ct.  
7 App.1980) (withdrawal granted from corporate and individual representation for nonpayment of  
8 attorneys fees and noncooperation); *Woods v. KC Masterpiece*, 2006 U.S. Dist. LEXIS 1812.  
9 (E.D. Mo., April 6, 2006) (permissive withdrawal appropriate where defendant failed to pay  
10 attorneys fees charged on an hourly rate plus costs based on representation agreement and where  
11 undue hardship suffered by attorney and his firm); *Fidelity Nat'l Title Ins. Co. of New York v.*  
12 *Intercounty Nat'l Title Ins. Co.*, 310 F.3d 537, 540 (7<sup>th</sup> Cir.2002) (lawyer permitted to withdraw  
13 due to client's failure to pay substantial bill; failure to pay caused substantial hardship to lawyer  
14 and withdrawal would not prejudice client); *Hammond v. T.J. Little & Co., Inc.*, 809 F. Supp.  
15 156 (D. Mass 1992) (withdrawal granted where client failed to pay pursuant to retainer  
16 agreement, even though failure not deliberate but resulted from financial inability); *Silva v.*  
17 *Perkins Machine Co.*, 622 A.2d 443 (R.I. 1993) (abuse of discretion to deny counsel's motion to  
18 withdraw upon learning that client insolvent and could not pay for legal services).

19 From the inception of their brief representation, both Attorneys have had difficulty in  
20 getting paid, and even more difficulties in getting their clients to work together, and are presently  
21 owed \$ 5,255.00.

22  
23 B. Representation Has Been Rendered Unreasonably Difficult by the Client:  
24 Permissive Withdrawal.

25 MRPC R.1.16(b)(6) also permits withdrawal if "[the representation] has been rendered  
26 unreasonably difficult by the client." MRPC R.1.16(b)(6) 2002; *see also Ferruzzo*, 163 Cal. Rptr.  
27 at 574; *Hammond*, 809 F. Supp. at 162-163; *Fisher v. Biman Bangladeshi Airlines et al.*, 1997

1 U.S. Dist. LEXIS 10405 (S.D.N.Y. July 18, 1997); *Kolacek v. Gemexco Trading, Inc.*, 1992 U.S.  
2 Dist. LEXIS 571, \*1 (S.D.N.Y., Jan. 23, 1992). Attorneys' representation has been rendered  
3 extremely difficult due to the lack of direction and general unavailability of their clients, and the  
4 total lack of communication and breakdown of the attorney client relationship between Rodrigo  
5 Capati and the Attorneys.

6  
7 VII.

8 Attorneys therefore desire to withdraw as counsel immediately. The Plaintiff will not be  
9 prejudiced if the Court grants leave to withdraw from representation in this matter, in that no trial  
10 date has been set, pleadings have not closed, and discovery has not begun. No critical deadlines  
11 face Handicraft.

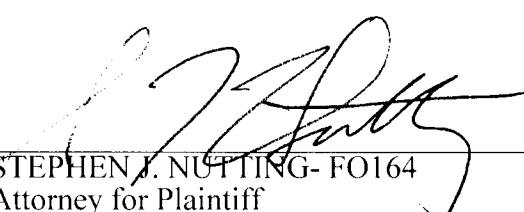
12  
13 VIII.

14 Under Civil Local Rule 83.5.g.4 "(a)n attorney may withdraw from a civil... case only  
15 after order of the Court and for good cause shown, and after serving notice upon his or her client  
16 and opposing counsel". Reasonable notice of Attorneys' intention to seek leave to withdraw has  
17 been served on trademark counsel to Handicraft (thru Attorney Matthew Smith) as well as  
18 personally to both Capati's, by mailing United States Postal Service, certified mail. Additionally,  
19 the other attorneys in this case, Richard Pierce, Edward Manibusan and Danilo Aguilar have been  
20 served.

21  
22 Wherefore, Stephen J. Nutting and S. Joshua Berger, Attorneys of record, respectfully  
23 requests that this Court issue an order permitting withdrawal from further representation effective  
24 immediately, without the need for a hearing.

1 Dated this 29<sup>th</sup> day of March, 2007.

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6 S. JOSHUA BERGER - F0173  
7 Attorney for Plaintiff

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10 STEPHEN J. NUTTING- F0164  
11 Attorney for Plaintiff